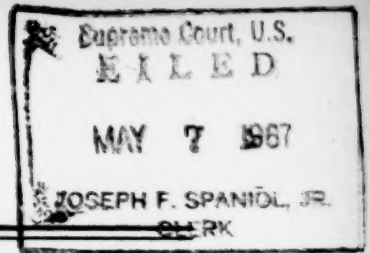


EDITOR'S NOTE

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87 - 1164

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In the Supreme Court of the United States

OCTOBER TERM, 1987

FORD MOTOR CREDIT COMPANY,

Respondent,

vs.

PETER W. TERPSTRA II,

Petitioner.

Petition for a Writ of Certiorari to the
Court of Appeals of the State of Indiana

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Pro Se
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3482

QUESTIONS PRESENTED

1. Does an individual, who is a defendant representing himself in a civil action, have the right to the assistance of counsel of choice who is not a licensed lawyer, attorney, or member of the bar?

2. Does the trial court's denial of the assistance of counsel of choice in a civil action abrogate the due process clause of the Constitution?

3. Does the trial court deny a defendant a meaningful hearing when it denies the assistance of counsel of choice in a civil action?

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 <u>CONSTITUTION, UNITED STATES:</u>	
Amendment V, Sec. 1, Cl. 4.2
Amendment XIV, Sec. 1, Cl. 3.2
 <u>OTHER CONSTITUTIONS:</u>	
Constitution For The Providence Of East Jersey.8

Peter W. Terpstra, II who is an individual domiciled in the State of Indiana (hereinafter "the petitioner"), respectfully prays that this Court issue a writ of certiorari to review the judgment and opinions of the Court of Appeals of the State of Indiana in FORD MOTOR - CREDIT COMPANY vs PETER W. TERPSTRA, II (Court of Appeals No. 3-1285 A372 PS).

OPINIONS BELOW

On July 24, 1986, the Indiana Court of Appeals, in an unpublished opinion, affirmed an order for Summary Judgment against petitioner. (See Appendix A)

On October 9, 1986, the Indiana Court of Appeals denied petitioner's petition for rehearing. (See Appendix B)

On February 10, 1987, the Indiana Supreme Court denied petitioner's petition to transfer. (See Appendix C)

JURISDICTION

On February 10, 1987, the Indiana Supreme Court denied petitioner's petition for transfer. The petitioner's petition for a writ of certiorari in this Court is due May 11, 1987, as provided by 28 U.S.C. Sec. 2101(c). The petitioner invokes the jurisdiction of this Court under 28 U.S.C. Sec. 1257(3).

CONSTITUTIONAL PROVISIONS INVOLVED

United States Constitution,
Amendment V, section 1, clause 4:

"...nor be deprived of life, liberty or property, without due process of law..."

United States Constitution, Amendment XIV, section 1, clause 3:

"...nor shall any State deprive any person of life, liberty or property without due process of law."

STATEMENT OF THE CASE

Petitioner became a defendant in a civil action for breach of contract. In an action for summary judgment against petitioner, petitioner demanded his next friend as his assistance of counsel of choice pursuant to his right to due process under the Fifth Amendment. The Indiana trial court ruled that only a licensed lawyer or attorney could be defendant petitioner's counsel of choice. Petitioner objected timely to the trial court's discretionary ruling on his Fifth Amendment right to due process with assistance of counsel of choice. The trial court moved the hearing forward against petitioner's will and over his objections and found for summary judgment for the plaintiff. Petitioner appealed to the Indiana Court of Appeals for a new hearing with his next friend as his

counsel of choice. The appeal was denied. The petition for rehearing was denied. The petition for transfer to the Indiana Supreme Court was denied.

ARGUMENT

The questions presented by this case raise an important issue of federal constitutional law which should be resolved by this Court. The issue arises in the context of trial procedure and due process. The issue regards the right of a defendant to have the assistance of counsel of choice in a civil hearing, when that counsel is not a lawyer or a member of the bar.

This Court has not directly addressed this issue.

The denial of the petitioner's request for assistance of counsel of choice stands in direct conflict with the rationale of opinions of this Court and the clear and unambiguous language of the constitution.

The conflict between the Indiana judiciary's view of the Due Process

Clause and the proper view articulated by
this Court and promulgated in the
Constitution should be resolved promptly.

DISCUSSION

A. The Indiana Court of Appeals' decision conflicts with the rationale and spirit of the United States Constitution.

"The cooperation and help of laymen, as well as of lawyers, is necessary if the right of reasonable access to the courts is to be available to the indigent among us.

"Reasonable access to the courts is right (secured by the Constitution and the laws of the United States), being guaranteed as against state action by the due process clause of the fourteenth amendment."

Justice Douglas in Johnson vs. Avery, Commissioner of Correction, et al., 393 U.S. 483, 498.

"An accused must be allowed to employ counsel of his own choice and he must be given a reasonable opportunity to do so."

Chandler v. Fretag, 348 U.S. 3, 1954.

"Lack of counsel of choice can be conceivably even worse than no counsel at all, or having to accept counsel beholden to one's adversary."

Burgett v. Texas, 389 U.S. 109.

"...and in all courts persons of all persuasions may freely appear in

their own way, and according to their own manner, and there plead their own causes themselves, or if unable by their friends..."
Constitution For The Providence Of East Jersey, 1683.

"The courts are not bound by mere forms, nor are they to be misled by mere pretences. They are at liberty - indeed are under a solemn duty - to look at the substance of things, whenever they enter upon the inquiry whether the legislature has transcended the limits of its authority. If therefore, a statute purporting to have been enacted to protect the public health, the public morals, or the public safety, has no real or substantial relation to those objects, or is a palpable invasion of rights secured by the fundamental law, it is the duty of the courts to so adjudge, and thereby give effect to the Constitution."
Mugler v. Kansas, 123 U.S. 623,661.

"Constitutional provisions for the security of person and property should be liberally construed. It is the duty of the courts to be watchful of constitutional rights against any stealthy encroachments thereon."
Boyd v. U.S. 116 U.S. 635

"The Bill of Rights was provided as a barrier, to protect the individual against arbitrary exactions of..."

legislatures, (and) courts...it is the primary distinction between democratic and totalitarian way." Re Stroller, Supreme Court of Florida, en banc, 36 So. 2d 443, 445 (1948).

There is a plethora of decisions in addition to those cited above to substantiate an individual's claim to counsel of choice in a civil action. The Indiana trial court's overly broad application of its power to regulate the practice of law became an abridgement of a fundamental constitutional right in this case.

The Indiana judiciary used the state statute for the regulation of the practice of law to abrogate petitioner's right to the assistance of counsel of choice. The Court has already decided that a state statute cannot be applied unnecessarily broadly in order to deny or disparage a fundamental right guaranteed

by the Constitution. The trial court erred when it included the exercise of petitioner's right to the assistance of counsel of choice in the state statute's restrictions on the practice of law.

What petitioner asked for was not representation but the assistance of counsel of choice. Petitioner made his demand for assistance of counsel of choice timely and then qualified his demand by requesting that his counsel be his next friend who was not an attorney or licensed lawyer. When the trial court denied petitioner's right, he then objected timely to the court's abrogation of petitioner's fundamental right.

In this civil action the Indiana Trial Court has made wrongful determination that petitioner intended to practice law by his demand for assistance of counsel of choice. This error of the

trial court's imprecision was affirmed by the Indiana Court of Appeals and by the Indiana Supreme Court in their refusal to hear petitioner's argument. The Indiana trial court has overextended the state's provision for regulating the practice of law. It was held previously by this Court:

"In weighing these possible justifications, this Court must be sure that, when the State attempts to achieve a legitimate end, it does not use means 'which sweep unnecessarily broadly and thereby invade the area of protected freedom.'" NAACP v. Alabama, ex rel, Flowers, 1964, 377 U.S. 288, 307; 84 S.Ct. 1302, 1312; 12 L.Ed. 325.

Regulation of the practice of law by the trial court is a legitimate end, but precision of regulation must be the touchstone. The overly broad application of the rules affecting the practice of law to an individual's timely demand for the assistance of counsel of choice

creates an onerous procedural requirement which effectively handicaps and abrogates the exercise of a guaranteed constitutional right.

"In an area so closely touching our most precious freedoms, precision of regulation must be the touchstone."

NAACP v. Button, 371 U.S. 415, 438 (1963); 83 S.Ct. 328, 340; 9 L.Ed. 2d 405.

The failure of this court to review the decisions of the Indiana judiciary would allow an overly broad construction of the statutes regulating the practice of law to stand as a barrier to any individual's right to the assistance of counsel of choice who was not a licensed attorney or member of the bar. Thus a violation of a basic right by the Indiana judiciary in a single courtroom will become a constructive violation of basic rights in every courtroom in these United States.

In this action petitioner made it clear to the court that he was demanding his constitutional right to the assistance of counsel of choice. The trial court conducted a summary investigation of petitioner's friend and ruled that her assistance to petitioner during the hearing would constitute the unlawful practice of law by a layman.

Petitioner objected to the court's assertion that assistance of counsel of choice by a layman was an unauthorized practice of law since she did not hold herself out as a licensed lawyer or attorney. The trial court still denied the petitioner's claim for assistance of counsel of choice. The petitioner then objected to the hearing moving forward against his will and over his objection.

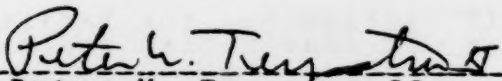
B. Conclusion

The Indiana Court of Appeals' decision in this case perpetuates a serious constitutional mistake and establishes a dangerous precedent. The denial of assistance of counsel of choice in a civil action by the Indiana trial court is in direct conflict with the State Constitution of Indiana and the Constitution of the United States. It is an abrogation of the due process clause and is repugnant to natural justice and equity.

However, to this date, no decision emanating from this Court has directly upheld the fundamental right to assistance of counsel of choice when timely demanded, in a civil action.

For these reasons, a writ of certiorari should issue to permit review by this Court of the judgment and opinions of the Indiana Court of Appeals.

Respectfully submitted,



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APPENDIX A

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Rochester, Indiana 46975

Attorney For Appellee:
Richard A. Nussbaum, II
Krisor & Nussbaum
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South Bend, Indiana 46601

IN THE COURT OF APPEALS OF INDIANA
THIRD DISTRICT

Peter W. Terpstra II, Def., Appellant
vs.

Ford Motor Credit Company, Plaintiff,
Appellee

(Appeals Cause) NO. 3-1285A 372PS

APPEAL FROM THE FULTON CIRCUIT COURT
The Honorable Douglas B. Morton, Judge
Cause No. C-84-402

Memorandum Decision filed July 24, 1986
(Not For Publication)

GARRARD, J. - MEMORANDUM DECISION

Peter W. Terpstra II (Terpstra)
entered into a lease purchase agreement
with a local Ford dealer, which was

assigned to Ford Motor Credit Company (Ford). Terpstra received possession of a van. For this he promised to pay \$14,384.64 in 48 monthly installments. He had the option to purchase the van at the end of the lease for an additional \$6,350.00.

From Terpstra's counterclaim it appears that Ford accepted payment in federal reserve notes (sic) and in checks drawn on the Leifers Ford State Bank. At some point, Terpstra became dissatisfied with the agreement and ceased making payments. Shortly thereafter, he attempted to tender a full payment in what has been described as "his own currency," which Ford refused to accept. Other facts, as necessary, appear in the body of this opinion.

Ford filed - suit seeking possession of the van. In due course a motion for summary judgment was made by Ford and granted by the trial court. From this ruling, Terpstra appeals. The issues presented are:

I. Did the trial court err in denying Terpstra the assistance of his counsel of choice and thus deny him a meaningful hearing?

II. Do genuine issues of material fact remain?

III. Was Steven Fredrick's affidavit admissible?

We affirm. 1

I.

Did the trial court err in denying

1 Litigants are reminded that Indiana Rules of Procedure, Appellate Rule 8.2(A)(1) calls for briefs to be double spaced.

Terpstra the assistance of his counsel of choice and thus deny him a meaningful hearing?

At a hearing held on the motion for summary judgment, Terpstra asked that Rachel Templeton be allowed to assist him. The trial court questioned Ms. Templeton and learned that she was not admitted to the bar. Upon further questioning the court learned that she would be providing legal, and not merely ministerial, help. The court denied Terpstra's request.

Based on various provisions of the federal and state constitutions 2 Terpstra argues that he has a right to

2. Terpstra refers us to the first, fifth, sixth, ninth and tenth amendments of the Federal Constitution, and Article 1, Sections 12 and 31, Indiana Constitution.

the assistance of counsel of his choice in a civil action. For the purposes of this appeal, we will assume that such a right exists.

Terpstra then argues that at common law there was a distinction between "counsel" and "attorney." Apparently he believes that "attorneys" were regulated by the courts where "counselors" were not. He concludes that the constitution was intended to preserve this common law distinction.

It is well known that the English legal profession is divided between barristers and solicitors. Thus, it is not entirely unreasonable to believe that the framers of the constitution saw a distinction between "counselor" and "attorney."

However, it does not follow that the common law did not regulate legal practice by "counsel." On the contrary, such regulation appears to have a long history. Pollock and Maitland, who recognize an ancient distinction between counters,(sic) who speak for their clients, and attorneys, who stand in the place of their clients, find such regulation as early as 1292:

"By this measure (Rolls of Parliament, I.84), which however, may not have been the first of its kind, 'both branches of the profession' were placed under the control of the justices, and apparently a monopoly was secured for those who had been thus appointed." (footnote omitted). 1 Pollock and Maitland, History of English Law 216 (2d Ed. 1898).

Since the common law recognized the state's power to regulate the practice of law before its courts, no matter what title was taken by the practitioner,

Terpstra's intent argument falls.

Terpstra also argues that limiting his choice of counsel to those admitted to the bar violates Indiana's guarantee that justice be freely administered and his right to assemble and to consult with his fellow citizens. Indiana Constitution, Article 1, Sections 12 and 31.

Again, we disagree. Article VII, Section 4 of the Indiana Constitution recognizes the Supreme Court's original jurisdiction over admission to the practice of law and its power to control unauthorized legal practice. The various constitutional provisions are to be construed in light of each other. Limiting legal practice to those admitted to the bar does not violate the state constitution.

II.

Do genuine issues of material fact remain?

When a motion for summary judgment is made, the trial court looks at the pleadings, the affidavits, such other evidence as there might be and the reasonable inferences that can be made in favor of the nonmoving party to determine if there are genuine issues of fact to be resolved. If there are not, it applies the law to the undisputed facts. While Terpstra proposes several disputed "facts," they are mere allegations and conclusions that fail to meet the standard of TR 56(E).

The facts in this case are undisputed. The parties' contract called for payment in "dollars." Without other evidence, the only

reasonable inference is that payment was intended to be in United States currency.³

From Terpstra's counterclaim, it can be inferred that he paid Ford with federal reserve notes (sic). Rhetorical paragraph 5. He also paid in checks drawn on the Leiters Ford State Bank. Rhetorical paragraph 7. The checks were an engagement to pay in the same United States dollars which circulate as federal reserve notes (sic). Rhetorical paragraph 9.

When Terpstra tried to pay off his contract debt, he attempted to use "his own currency." Obviously, Terpstra dollars (sic) were not United States dollars. It appears that they were

3. Terpstra believes such "dollars" to be unconstitutional but, correctly, has not raised this issue on appeal.

"book entry note dollars" rather than an engagement to pay United States dollars. Rhetorical paragraph 14.

Since the contract contemplated payment in what re generally regarded as United States dollars, this was not a valid tender.

III.

Was Steven Fredrick's affidavit admissible?

The only affidavit Ford submitted was made by Steven Fredrick. Terpstra claims that it is inadmissible since it was not notarized or witnessed.

Indiana Rules of Procedure, Trial Rule 11(B) provides:

"(B) Verification by Affirmation or Representation. When in connection with any civil or special statutory proceeding it is required that any pleading, motion, petition, supporting affidavit, or other document of any kind, be verified, or that an oath be taken, it shall be sufficient if the

subscriber simply affirms the truth of the matter to be verified by an affirmation or representation in substantially the following language:

“I(we) affirm, under the penalties for perjury, that the foregoing representation(s) is (are) true.

Signed _____

Any person who falsifies an affirmation or representation of the fact shall be subject to the same penalties as are prescribed by law for the making of a false affidavit.”

Fredrick's affidavit had an affirmation. It was properly admitted.

Terpstra has failed to present reversible error. The trial court's decision is affirmed in all respects.

Affirmed. STATON, P.J. and
HOFFMAN, J. Concur.

APPENDIX B

STATE OF INDIANA
Clerk of the Supreme Court
And Court of Appeals
217 State House
Indianapolis, IN 46204

No. 3-1285A 372PS Peter W. Terpstra II

vs. Ford Motor Credit Co. et al.

You are hereby notified that the Court
of Appeal has on this day Appellants
petition for Rehearing Denied.

Buchanan, C.J.

Please acknowledge receipt of this
notice in order that our records may
show that you have been notified of this
action.

WITNESS my name and the seal of said
Court, this 9th day of October, 1986.

(S) Marjorie H. O'Laughlin

Clerk Supreme Court and Court of Appeals

NO. Richard A. Nussbaum, II South Bend

Peter W. Terpstra, II, Rochester

I hereby acknowledge receipt of the
above notice.

(S) Peter W. Tersptra II, Appellant

Date 10-20-86

APPENDIX C

STATE OF INDIANA
Clerk of the Supreme Court
And Court of Appeals
217 State House
Indianapolis, IN 46204

No. 3-1285A 372PS

Peter W. Terpstra, II vs. Ford Motor
Credit Co.

You are hereby notified that the Supreme
Court has on this day Appellants
petition to Transfer is hereby DENIED.
Givan, C.J. All Justices Concur.

Please acknowledge receipt of this
notice in order that our records may
show that you have been notified of this
action.

WITNESS my name and the seal of said
Court, this 10th day of Feb. 1987.

(S) Marjorie H. O'Laughlin (crossed out)
(S) Dan Heiser

Clerk Supreme Court and Court of Appeals
Peter W. Terpstra, II, Rochester

Richard A. Nussbaum, II, South Bend

No. 3-1285A 372PS

I hereby acknowledge receipt of the
above

notice.

(S) Peter W. Terpstra II, Appellant

Date _____ 19 _____